

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HUMAN SERVICES

In Re: The Revocation of the License of  
Diana Shaw  
3211 Bryant Avenue North  
Minneapolis, MN 55412-2535  
to provide Family Child Care

**FINDINGS OF FACT, CONCLUSIONS  
AND RECOMMENDATION**

Administrative Law Judge Bruce H. Johnson (the "ALJ") conducted a hearing in this matter on Thursday, June 22, 2006, at 9:30 a.m., at the Office of Administrative Hearings, Suite 1700, 100 Washington Avenue South, Minneapolis, MN 55401.

Rebecca S. Morrisette, Assistant Hennepin County Attorney, 525 Portland Avenue South, 12<sup>th</sup> Floor, Minneapolis, MN 55415, appeared on behalf of the Hennepin County Human Services and Public Health Department (County) and the Minnesota Department of Human Services (Department). The Respondent, Diana Shaw, 3211 Bryant Avenue North, Minneapolis, MN 55412-2535, did not appear in person or by counsel.<sup>1</sup> The OAH hearing record closed on June 26, 2006, when the County's affidavit in support of its motion for default was received.

**STATEMENT OF ISSUES**

Should the Licensee's family child care license be revoked because she violated statutes and rules that are applicable to family child care licensees?

The Administrative Law Judge concludes that the Licensee did violate statutes and rules that are applicable to her family child care license. The Commissioner's order revoking the license should therefore be affirmed.

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. On May 9, 2006, a copy of the Notice of and Order for Hearing in this matter was delivered via first class mail to Diana Shaw, 3211 Bryant Avenue

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<sup>1</sup> See Finding No. 4.

North, Minneapolis, MN 55412-2535, as appears from an Affidavit of Service by Mail on file herein. That address was the address that the Respondent had provided to the Department, in connection with her licensure as a provider of family child care services.<sup>2</sup>

2. The Notice of and Order for Hearing scheduled the hearing in this matter for Thursday, June 22, 2006, at 9:30 a.m., at the Hennepin County Government Center, 12<sup>th</sup> Floor of the Administration Tower, 300 South 6<sup>th</sup> Street, Minneapolis, MN 55487. However, the County notified the Office of Administrative hearings that the June 22, 2006, hearing was to be conducted at the Office of Administrative Hearings, Suite 1700, 100 Washington Avenue South, Minneapolis, MN 55401.<sup>3</sup>

3. The reference to the Hennepin County Government Center in the Notice of and Order for Hearing was incorrect. However, the cover letter to Ms. Shaw that accompanied the Notice of and Order for Hearing did direct her attention to the OAH website for information concerning OAH, including location, parking, directions, and procedures.

4. The Respondent did not appear for the hearing at either the Hennepin County Government Center or the Office of Administrative Hearings,<sup>4</sup> did not obtain the ALJ's prior approval to be absent from the hearing, did not file a Notice of Appearance, and did not request a continuance or any other relief.

5. The Notice of and Order for Prehearing Conference and Hearing contained the following informational warning:

12. Failure to appear at the hearing or prehearing conference will result in the allegations of the Notice and Order for Hearing, including the incorporated order, being taken as true. This means that the action being appealed will be upheld.

6. Because Respondent failed to appear at the hearing, she is in default.

7. When a party is in default, Minn. R. 1400.6000 provides that the allegations contained in the notice of and order for hearing may be taken as true. The allegations contained in the Notice and Order for Hearing, including the incorporated Order of Revocation, are all taken as true and incorporated by reference into these Findings of Fact.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

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<sup>2</sup> See *also* Affidavit of Rebecca S. Morrisette (Ex. 1).

<sup>3</sup> Ex. 1.

<sup>4</sup> *Id.* See also Affidavit of Tim Hennessey (Ex. 2).

## **CONCLUSIONS**

1. Minnesota law gives the Administrative Law Judge and the Commissioner authority to conduct this contested case proceeding and to make findings, conclusions, and recommendations or a final order, as the case may be.<sup>5</sup>

2. The Department and the County gave proper and timely notice of the hearing, and they have also fulfilled all procedural requirements of law and rule so that this matter is properly before the Administrative Law Judge.

3. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice and Order for Hearing or other pleadings may be taken as true or deemed proved without further evidence.

4. The Respondent is in default herein as a result of her failure, without the ALJ's prior consent, to appear at the hearing in this matter.

5. Respondent violated Minn. R. 9502.0435 by having controlled substances and drug paraphernalia present in her family child care home.

6. Respondent violated Minn. Stat. § 245C.03 by allowing an individual, whom the Commissioner had reasonable cause to believe required a background study, to have unsupervised access to children served by her family child care program.

7. Minn. Stat. § 245A.07, empowers the Commissioner to revoke a license if a license holder fails to comply fully with applicable laws or rules.

8. Minn. Stat. §§ 45.027, subd. 6, empowers the Board also to take disciplinary action against the Respondent, as a result of the Respondent's violations of the applicable licensure statutes and rules.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

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<sup>5</sup> Minn. Stat. §§ 14.50, 14.57, 14.69; 245A.05 through 245A.08; and Ch. 245C.

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the Commissioner AFFIRM the March 21, 2006, Order of Revocation of the Respondent's family child care license.

Dated: June 27, 2006.

s/Bruce H. Johnson  
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BRUCE H. JOHNSON  
Administrative Law Judge

Reported: Default (1 tape)  
No transcript prepared

### **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of Human Services will issue a final decision after reviewing the administrative record, and he may adopt, reject or modify the Administrative Law Judge's Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this recommended decision in which to file any exceptions to the report with the Commissioner.<sup>6</sup> Parties should contact the office of Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155, (651) 296-2701 to find out how to file exceptions. Since the Commissioner must issue his final order within 10 working days from receipt of the Administrative Law Judge's recommended decision,<sup>7</sup> the parties are requested to file any exceptions as soon as possible.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minnesota law, the Commissioner of Human Services is required to serve his final decision upon each party and the Administrative Law Judge by first-class mail.

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<sup>6</sup> Minn. Stat. § 14.61.

<sup>7</sup> *Id.*